

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA RACING COMMISSION**

**In the Matter of the Adoption of
the Rules of the Racing Commission
Governing Pari-Mutuel Horse Racing,
Minnesota Rules, Chapters 7870, 7873,
7875, 7876, 7877, 7883, 7890, 7895, 7897.**

**ORDER ON REVIEW OF
RULES UNDER MINNESOTA
STATUTES, SECTION 14.26**

The Minnesota Racing Commission ("Commission" or "Agency") is seeking review and approval of the above-entitled rules, which were adopted by the agency without a hearing. Review and approval is governed by Minn. Stat. § 14.26. On March 29, 2004, the Office of Administrative Hearings received the documents that must be filed by the agency under Minn. Stat. § 14.26 and Minn. R. 1400.2310. Based upon a review of the written submissions and filings, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED:

1. The agency has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with all procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400, with the exception of two rule subparts described below.
3. The following provisions of the adopted rules are **DISAPPROVED** as not meeting the requirements of Minnesota Rules, Part 1400.2100, item E: 7873.0199, subp. 6a; and 7877.0170, subp. 9, item C. (See Memorandum). All other rule parts are approved, including the withdrawals discussed below.

Dated this _12th_ day of April, 2004.

_s/ Allan W. Klein _____
ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

Pursuant to Minnesota Statutes, Section 14.26, the agency has submitted these rules to the Administrative Law Judge (“ALJ”) for a review as to legality. Subsequent to the submission, the agency has asked to withdraw two of its proposed changes. The Administrative Law Judge has found two defects in the rules and has recommended two other technical corrections, as discussed below. All other rule parts are approved.

Defects

Proposed rule part 7873.0199, subp. 6a.A

This new rule part addresses the designation of a carryover in a pick four wager pool and how that pool may be calculated. It states, in relevant part, “The association, with the approval of the commission, may add a carryover to the pick four wager. . . .” The Commission seeks to adopt these carryover provisions for the pick four pool at the request of Canterbury Park and their patrons, and it anticipates that such a carryover will increase revenue to the facility, patrons, and the state.

The rule, as written, gives the Commission undue discretion under Minn. R. 1400.2100, item E, in that it contains no criteria as to how the Commission will decide if a carryover to the pick four pool is appropriate. For an example of how to cure this defect, the Commission may refer to Minn. R. 7873.0195, which governs the distribution or carryover of pick six, pick three, and pick four pools. It requires the Commission to consider the type of breed racing, assignment of future racing days, and the best interest of racing when determining whether distribution or carryover is appropriate. These are standards, albeit general ones, that do provide limits on the Commission’s decision.

To correct the defect in proposed part 7873.0199, subp. 6a, the rule must contain criteria the Commission anticipates using so that the regulated parties understand how the carryover determination will be made. The Administrative Law Judge suggests adding the criteria language from Minn. R. 7873.0195 or making a reference to Minn. R. 7873.0195. Adoption of language having this or a similar effect would cure the above-noted defect. It would not constitute a substantial change, and the resulting subpart is needed and reasonable.

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Proposed rule part 7877.0170, subp. 9

A portion of the existing rule prohibited the possession of non-FDA approved medications by licensed veterinarians. The Commission proposes to replace this prohibition with the following language: “A veterinarian may possess substances that are FDA approved, but not specifically for use on the horse, only with the prior approval of the commission’s veterinarian and the Board of Stewards. . . .” The Commission seeks such an amendment to decrease the number of drugs/substances on the backside that can cause harm to humans and horses.

The rule, as written, gives the Commission undue discretion under Minn. R. 1400.2100, item E, in that it contains no criteria as to how the Commission’s

veterinarian and the Board of Stewards will make their determination about which substances are going to be permitted and which are not.

If the Commission simply wants notice from veterinarians about what non-horse drugs they are carrying on the facility premises, then the defect can be corrected by rewriting the rule language to just require notice. But if, in fact, there is to be a more detailed process or analysis that the Commission veterinarian and the Board of Stewards plan to make, then the criteria must be stated in the rule to correct the defect. Either change would correct the defect, and neither would constitute a substantial change.

Recommended Technical Corrections

AR3459, page 2, line 23 and page 3, lines 11, 15, 18 and 25

The ALJ recommends the following change: “. . . that day’s racing program.”

Proposed rule part 7877.0170, subp. 2a

The ALJ recommends the following change to aid in consistency and clarity: “If warranted after full consideration by the stewards of all facts and circumstances as contained in chapter 7879 ~~by the stewards~~, the assistant trainer shall be held equally culpable with the trainer by whom ~~he or she~~ the assistant trainer is employed for any acts to which the assistant trainer has prior knowledge or involvement.”

Withdrawals

The Commission has chosen to withdraw two rule changes relating to firearms, in part 7878.0150, subparts 1 and 1a. Minn. Stat. § 14.05, subd. 3 explicitly permits an agency to withdraw a proposed rule “at any time before filing it with the secretary of state.” The only prohibition on the withdrawal of a portion of a rule occurs if the withdrawal causes the remaining rule to be “substantially different” from the rule as published. The Administrative Law Judge has determined that these two withdrawals would not cause the remaining rule to be “substantially different,” using the standards contained in Minn. Stat. § 14.05, subd. 2.

A.W.K.